

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DR. SUNIL NAYYAR

Plaintiff,

v.

MOUNT CARMEL HEALTH SYSTEM,

and

DR. JOHN WEISS,

and

DR. LI TANG,

and

DR. RICHARD STRECK,

Defendants.

Case No. 2:12-cv-189

NOTICE OF REMOVAL

TO: The Honorable Judges of the
United States District Court
for the Southern District of Ohio,
Eastern Division

Defendants Mount Carmel Health System, Dr. John Weiss, Dr. Li Tang, and Dr. Richard Streck (“Defendants”) hereby notify the Court of the following:

1. On February 13, 2012, an action was commenced in the Court of Common Pleas, Franklin County, Ohio, captioned *Dr. Sunil Nayyar v. Mount Carmel Health System, Dr. John Weiss, Dr. Li Tang and Dr. Richard Streck*, Case No. 12CV001879.

2. Defendants were served with the Summons and Complaint on or about February 17, 2012. Copies of the Complaint and the Summons served upon Defendants are attached

hereto in Exhibit A. Exhibit A includes all the process, pleadings, and orders that have been served upon Defendants in said case to date.

3. 28 U.S.C. § 1441(a) provides that any civil action brought in state court over which this Court would have original jurisdiction may be removed. 28 U.S.C. § 1331 grants this Court original jurisdiction over claims “arising under” federal law. The United States Supreme Court has held that a case may arise under federal law “where the vindication of a right under state law necessarily turn[s] on some construction of federal law.” *Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 808 (1986) (quotation omitted).

4. Plaintiff’s Complaint alleges that he has another lawsuit pending against Defendants in this Court, in which he has asserted a discrimination claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (See Complaint ¶¶ 52, 77). That lawsuit is captioned *Nayyar v. Mount Carmel Health System, et al.*, Case No. 2:10-cv-00135-ALM-NMK (the “Federal Lawsuit”).

5. Plaintiff’s Complaint further alleges that in his Federal Lawsuit, Plaintiff identified an allegedly similarly-situated employee outside of his protected class, and that Defendants subsequently terminated that individual. (Complaint ¶¶ 53-54, 77-78).

6. Count IV of the Complaint avers that this alleged conduct “deprived” Plaintiff of his “rightful cause of action” under Title VII, which he asserts is a violation of Ohio Revised Code §§ 4112.02 and .99. (Complaint ¶¶ 76-79).

7. In order to adjudicate Count IV of Plaintiff’s Complaint, a court must determine whether Plaintiff, in fact, had a “rightful cause of action” under Title VII. As such, the vindication of Plaintiff’s claim under state law necessarily turns on the construction of Title VII, a federal law.

8. Accordingly, Defendants are removing this action to this Court pursuant to 28 U.S.C. §§ 1331 and 1441 because it is a civil action arising under the laws of the United States.

9. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days after receipt by Defendants of Plaintiff's Complaint.

10. Venue is proper in the Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. § 1391(b) and Rule 82.1 of the Local Rules of the United States District Court for the Southern District of Ohio. Defendants' principal place of business is located in Franklin County, Ohio. Also, on information and belief, and based upon the allegations in the Complaint, all of the alleged events or omissions at issue occurred in Columbus, Ohio. Further, Plaintiff's Complaint states that she resides in Columbus, Ohio.

11. Written notice of the filing of this Notice of Removal shall be filed with the Clerk of the Court of Common Pleas, Franklin County, Ohio, and shall be served upon all parties together with a copy of this Notice pursuant to 28 U.S.C. § 1446(d).

12. All Defendants consent to the removal of this case to federal court.

WHEREFORE, Defendants Mount Carmel Health System, Dr. John Weiss, Dr. Li Tang, and Dr. Richard Streck respectfully request that this action be removed from the Court of Common Pleas of Franklin County, Ohio, to this Court for trial and final determination.

Respectfully submitted,

/s/ M.J. Asensio

M. J. Asensio (0030777), Trial Attorney
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Attorneys for Defendants Mount Carmel
Health System, Dr. John Weiss, Dr. Li Tang,
and Dr. Richard Streck

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Removal is being
served upon:

William Patmon, III
The Patmon Law Firm
88 East Broad Street, Suite 1580
Columbus, Ohio 43215

Attorney for Plaintiff

by regular United States mail, postage prepaid, on this 1st day of March, 2012.

/s/ Kristopher J. Armstrong

Kristopher J. Armstrong